REMARKS

In the Office Action of October 18, 2007, the Examiner rejected Claims 1-4, 6, 9-14 and 18-27 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,178,353 to Griffith et al. in view of U.S. Patent No. 5,545,191 to Mann et al. The Examiner also rejected Claims 5 and 15 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,178,353 to Griffith et al. in view of U.S. Patent No. 5,545,191 to Mann et al. and U.S. Patent No. 6,275,736 to Kuzma et al. Applicant respectfully traverses the rejection and submits the following arguments.

In the Office Action the Examiner acknowledges that Griffith et al. fails to disclose a semi-implantable hearing aid apparatus or mounting method that includes a contoured shape that distributes pressure resulting from magnetic attraction over an area of a patient's skin contacted by a surface of a hearing aid, as contemplated by each of the independent Claims 1, 9 and 19 of the present application. Indeed, in Griffith et al. the external housing 40 presents square corners with no contoured shape to distribute pressure resulting from attraction between magnets 26 and 28, as shown in Fig. 3B thereof reproduced below:

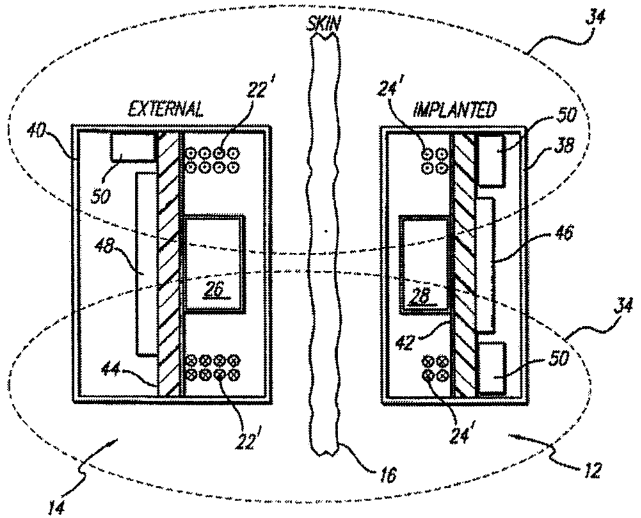

FIG. 3B

Applicant notes that Griffith et al. actually exemplifies the prior art over which the present invention constitutes an improvement.

Mann et al. also fails to disclose an arrangement in which a contoured shape distributes pressure resulting from magnetic attraction over an area of a patient's skin contacted by a surface of a hearing aid. In this regard, the Examiner has taken the position that section 68 of the external unit 62 shown in Fig. 5 of Mann et al., reproduced below, and depressions 54 of the external unit shown in Fig. 4 of Mann et al., reproduced below, each disclose a "contoured shape" and that section 68 has a "contoured shape which distributes pressure". The Examiner further takes the position that it would have been obvious to alter the external housing of Griffith et al. per the teachings of Mann et al. such that the external housing of Griffith et al. has a contoured surface to aid "in properly orienting the external housing".

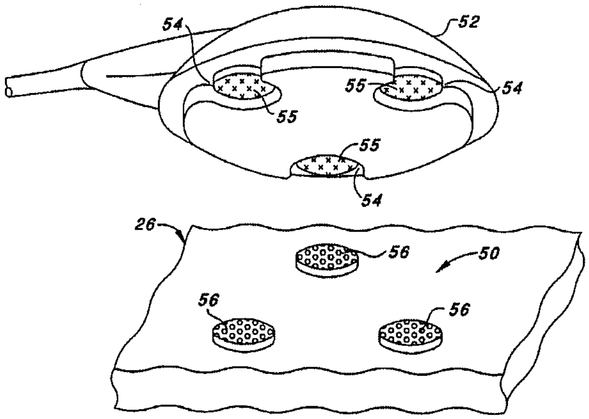

FIG. 4

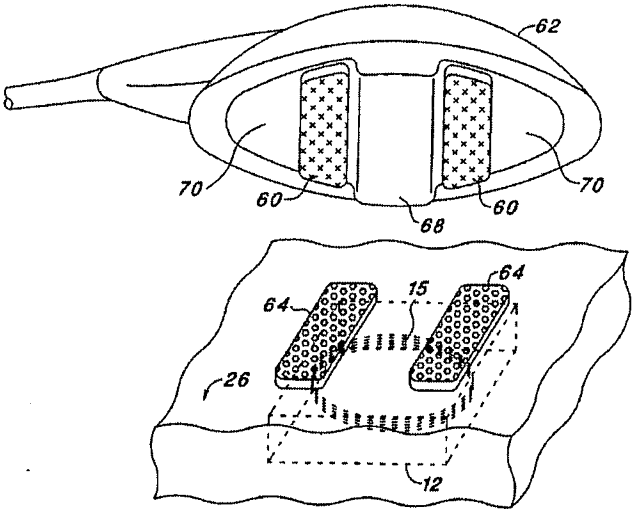

FIG. 5

Applicant strongly disagrees with the Examiner's position.

In particular, Mann et al. specifically states that the contemplated invention utilizes:

> "a hook and loop attaching means for attaching the external unit to the skin in a proper location for optimal electromagnetic coupling between the units". (Emphasis added) Columns 2, Lines 6-11

Clearly, Mann et al. relies upon the use of hook and loop attaching means as opposed to any contouring of external housing surfaces for purposes of "properly orienting" an external housing. For example, in relation to Fig. 5, set forth above, Velcro strips 60 are arranged in parallel on an external unit 62 and Velcro strips 64 are arranged in a similar parallel fashion on surface 26 so as to provide for proper orientation of the external unit 62. See also Column 5, Lines 20-33 of Mann et al.

Applicant further submits that Mann et al. only contemplates that the flat face of section 68 shown in Fig. 5 and the flat face of external unit 52 shown in Fig. 4, contact a patient's skin. That is, Mann et al. fails to teach a contoured shape to distribute pressure resulting from magnetic attraction forces. Indeed, it is important to understand that Mann et al. utilizes hook and loop attaching means to avoid the implementation of a magnetic attraction forces and that Mann et al. expressly teaches away from the utilization of magnetic attraction forces, (i.e. such as those utilized in Griffith et al.), stating:

> "Yet another device known in the art includes a permanent magnet in each of the implanted and external devices....Rare-earth magnets in both the implanted and external units magnetically secure the external unit in the proper position for optimal coupling. A drawback of such design is that the magnet can significantly reduce the internal space available within the implanted unit, and increase the weight of both the internal and external units. Furthermore, for small internal units, which require the use of smaller magnets, the magnets

> provide only weak magnetic coupling…On the other hand, the magnet can cause excessive compressive pressure to be applied to tissue of the living organism." (Emphasis added) Column 1, Lines 46-60

In short, Applicant submits that it would not be obvious to one skilled in the art to combine the teachings of Griffith et al. with Mann et al. since Griffith et al. utilizes magnets for external unit positioning, whereas Mann et al. utilizes a hook and loop attaching means for external unit positioning. Indeed, Applicant submits that, as supported by Mann et al., magnetic positioning versus hook and loop attachment positioning are alternative, stand-alone options. Indeed, Mann et al. utilizes hook and loop attachment means to avoid the "excessive compressive pressure" that can result from the utilization of magnets, and therefore teaches away from any combination of Mann et al. and Griffith et al.

Further, Applicant notes that not only does Mann. et al. teach that only flat surfaces of section 68 contact a patient's skin, there would be no reason for Mann et al. to provide a contoured surface for pressure distribution since pressure concerns are obviated by the use of hook and loop attaching means in Mann et al. In short, Applicant submits that the Examiner's attempt to identify a feature not addressed or needed in the Mann et al. arrangement, for use in a combination with Griffith et al., is in appropriate.

Additionally, Applicant submits that even if Griffith et al. and Mann et al. are improperly combined, such a combination does not rendered obvious Claims 1, 9 and 19 of the present application since neither reference discloses an arrangement which a contour shape distributes pressure resulting from magnetic attraction over an area of a patient's skin contacted by a surface of a hearing aid.

In view of the foregoing Applicant submits that Independent Claims 1, 9 and 19 are allowable and that all claims that depend from such claims are allowable for the same reasons, and further since such dependent claims present further combinative features not disclosed or rendered obvious by the prior art. In the later regard, and in relation to Claims 5 and 15, Applicant submits that

Kuzma et al. is not properly combinable with at least Griffith et al. since it teaches away from magnetic retention arrangements as noted in the prior Amendment and Response filed July 31, 2007. Further, in any case, Kuzma et al. fails to overcome the noted shortcomings of Griffith et al. and Mann et al.

Based upon the foregoing, Applicants believe that all pending claims are in condition for allowance and such disposition is respectfully requested. In the event that a telephone conversation would further prosecution and/or expedite allowance, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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